POWERS — EXTINGUISHMENT OF POWER APPENDANT BY CONVEYANCE IN FEE BEFORE APPOINTMENT. — The testator devised property to trustees for the use of his mother for life, and at her death to be paid over to such charitable institution as his widow should elect; but in default of such election the income to be paid to his widow for life, and at her death the property to be divided between two specified associations. The mother, the widow, the testamentary trustees, and the trustees of the specified associations joined in a conveyance to the appellee. *Held*, that the power appendant is extinguished by the conveyance. *Columbia Trust Co.* v. *Christopher*, 117 S. W. 943 (Ky.).

For a discussion of the principles involved, see 22 HARV. L. REV. 444.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — EXCLUSIVE TELEPHONE CONTRACT. — Suit was brought on a contract whereby the defendant telephone company agreed to give exclusive connection to the plaintiff telephone company. *Held*, that such a contract will not be enforced by the courts. *United States Telephone Co.* v. *Central Union Telephone Co. et al.*, 171 Fed. 130 (C. C. N. D. Ohio). See NOTES, p. 54.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — TERMINATION OF TELEPHONE CONNECTION. — The plaintiff and defendant telephone systems were physically connected under a verbal agreement that each should render service to the patrons of the other. No provision for termination was made. *Held*, that the agreement fixed a status terminable only by the retirement of one or the other of the parties from the telephone business. *State ex rel. Goodwin* v. *Cadwallader*, 87 N. E. 644 (Sup. Ct., Ind.). See NOTES, p. 54.

RESTRAINT OF TRADE — COMBINATION BY AGREEMENTS AS TO PRODUCT OR PRICES — INJUNCTION AGAINST UNLAWFUL COMBINATION. — Certain insurance companies entered into an agreement, by which the management was to be in a central body, which should establish uniform rates. The Attorney General, on behalf of the public, sought to enjoin them from acting under the agreement. *Held*, that he is entitled to the injunction. *McCarter* v. *Firemen's Ins. Co.*, 73 Atl. 80 (N. J., Ct. Err. & App.).

Contracts tending to suppress competition are unlawful only in the sense that they are unenforceable. *Richardson* v. *Buhl*, 77 Mich. 632. The law gives no affirmative relief against them. *McGregor* v. *Mogul Steamship Co.*, [1892] A. C. 25. A different rule applies to combinations of public service companies, whose *ultra vires* acts likely to injure the public can be enjoined by the state. *Attorney General* v. *Great Northern Ry.*, 1 Dr. & Sm. 154. So too a statute fixing prices charged by a corporation engaged in a business affected with a public interest has been held to be constitutional. *Munn* v. *Illinois*, 94 U. S. 113. It might be argued that insurance is such a business, but there is no authority for so treating insurance as a public service. In spite of the court's ingenious and plausible opinion, the principal case marks an extension of equity jurisdiction as yet unsupported by authority. See *Queen Ins. Co.* v. *State*, 86 Tex. 250. The result, although desirable, might more properly be reached by statute than by judicial decision. See 19 HARV. L. REV. 301.

RULE IN SHELLEY'S CASE — APPLICATION TO PERSONALTY. — The residue of an estate consisting of realty and personalty was left upon trust to pay the income "in equal shares to A and B during their lives, and upon the death of either her share to go to her heirs" until one half of the principal had been made over to them. *Held*, that though by the Rule in Shelley's Case A and B take an equitable estate in fee in the realty, that rule is inapplicable to the personalty. *Lord* v. *Comstock*, 88 N. E. 1012 (Ill.). See NOTES, p. 51.

SALES — TIME OF PASSING OF TITLE — CASH SALES: WAIVER OF THE CONDITION BY DELIVERY. — The plaintiff, who lived some distance from town, sold

and delivered wheat after banking hours, receiving a check which was dishonored when he presented it on his next visit to town about two weeks later. Meanwhile the buyer became insolvent and the defendant attached the wheat. The check would have been paid if presented before the insolvency, although the buyer had no deposit. In an action for conversion the plaintiff had a verdict and judgment. *Held*, that the judgment is not against the evidence. *People's State Bank of Michigan Valley* v. *Brown*, 103 Pac. 102 (Kan.).

It is well settled that delivery of the goods by the seller under an agreement for a cash sale may constitute a waiver of the condition of payment and pass title to the buyer. *Globe Milling Co.* v. *Minnesota Elevator Co.*, 44 Minn. 153. The generally accepted rule is that such a waiver depends upon the intention of the seller as determined by the jury. *Goslen* v. *Campbell*, 88 Me. 450. Some courts treat unrestricted delivery as *prima facie* evidence of an intention to waive cash payment. *Smith* v. *Lynes*, 5 N. Y. 41. Others have held that such a delivery should be conclusive evidence of a waiver. *Upton* v. *Sturbridge Cotton Mills*, 111 Mass. 446. See WILLISTON, SALES, § 346. Logically this rule is correct, for delivery without payment is obviously inconsistent with a cash sale. Applying this rule to the facts of the principal case there was either an absolute delivery on credit or a conditional sale. If the former, an action for conversion would not lie. If a conditional sale, it would be void against creditors of the buyer because unrecorded. GEN. STAT. KAN. (1897), c. 120, § 13. Even under the generally accepted rule the decision seems an extreme one, for the authorities require that the seller shall assert his right to the goods within a "reasonable time." *Smith* v. *Dennie*, 23 Mass. 262.

SPECIFIC PERFORMANCE — LEGAL CONSEQUENCES OF RIGHT OF SPECIFIC PERFORMANCE — RIGHT OF PERSONAL REPRESENTATIVE TO PURCHASE MONEY IN OPTION TO PURCHASE. — A leased land to B, giving him an option to purchase at any time within five years on notifying A or "his legal representative," and tendering to A or "his legal representative" the agreed price. A died intestate. B tendered the price to the administrator of A. *Held*, that this is a proper tender, the heirs of A having no rights in the money. *Rockland-Rockport Lime Co.* v. *Leary*, 117 N. Y. Supp. 405 (Sup. Ct., App. Div.).

The administrator's right to the purchase price on a contract made by the intestate flows from the descent to the personal representative of the vendor's right of action for the price. *Moore* v. *Burrows*, 34 Barb. (N. Y.) 173. In the case of an unexercised option, since there is no obligation, no right should descend to the personal representative. The case of a mortgage conveying title without a mortgage debt is analogous. The executor has no claim on what is paid to redeem, as the decedent had no cause of action against the mortgagor. *Turner* v. *Crane*, 1 Vern. 170. See *Smith* v. *Smoult*, 1 Ch. Cas. 88; *Thornborough* v. *Baker*, 3 Swanst. 628. The result should be the same where land descends subject to an option to purchase. *Smith* v. *Lowenstein*, 50 Oh. St. 346; *Re Walker's Estate*, 17 Jur. 706. The principal case, however, represents the prevailing rule both in England and in this country. *In re Isaacs*, [1894] 3 Ch. 506; *Newport Water Works* v. *Sisson*, 18 R. I. 411. The doctrine that the acceptance of an option relates back so as to convert the realty into personalty from the time of giving the option has been confined in England to a dispute between claimants under the vendor, so that where he option is exercised after a destruction of the premises by fire, the vendee is not entitled to the insurance. *Edwards* v. *West*, 7 Ch. D. 858. *Contra*, *Williams* v. *Lilley*, 67 Conn. 50; *People's St. R'y Co.* v. *Spencer*, 156 Pa. St. 85.

TRUSTS — POWERS AND OBLIGATIONS OF TRUSTEES — WHO MAY EXECUTE TRUST AFTER DEATH OF TRUSTEE. — Money was left to an administrator to pay the income to the testator's sister for life, and authorizing him to use any part of the principal for her support, if in his judgment it should be necessary. A subse-